IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4263 of 1991

with

SPECIAL CIVIL APPLICATION No 7681 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

BALABHAI L METALIA

Appearance:

1. Special Civil Application No. 4263 of 1991

MR HARDIK C RAWAL for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/10/2002

ORAL JUDGEMENT

#. Special Civil Application No.4263 of 1991 is filed by the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"), through its Managing Director, Ahmedabad, under Article 227 of the Constitution of India, challenging the legality of the order and award dated January 8, 1991, rendered by the Labour Court, Rajkot, in Reference (LCR) No.2211 of 1988, by which the petitioner-Corporation is directed to reinstate the respondent-workman in service without backwages.

Special Civil Application No.7681 of 1991 is filed by Mr.Balabhal L.Metalia under Article 227 of the Constitution of India, challenging the legality of the order and award dated January 8, 1991, rendered by the Labour Court, Rajkot, in Reference (LCR) No.2211 of 1988, by which backwages have been denied to the petitioner-workman while ordering his reinstatement in service.

#. As both the petitions involve determination of common question of facts and law, the same are being disposed of by this common judgment.

#. The respondent-workman in Special Civil Application No.4263 of 1991 was the employed as a Conductor in a bus plying between Bhavnagar and Amreli. On November 20, 1986, the bus was checked and it was found that from amongst 21 travelling passengers, the respondent-workman had collected fare in respect of ticket Nos. 1799480 to 1799501 of Rs.5/- denomination each and stage No.1 was punched. It is the case of the Corporation that when the passengers were asked to show tickets issued to them, the respondent-workman had seen to it that the tickets were not shown to the checking staff and were handed over to non travelling passengers. According to the Corporation, the intention of the respondent-workman was to collect those tickets from the passengers and to re-issue the same in the return journey. The statements of the passengers were also recorded. On the basis of the report of the checking party, a departmental inquiry was held against the respondent-workman. At the conclusion of inquiry, the Inquiry Officer held that the charges levelled against the respondent-workman were proved. The competent authority agreed with the report of the Inquiry Officer and after hearing the respondent-workman, dismissed him from service with effect from May 13, 1988. Feeling aggrieved by the said action, the

respondent-workman raised an industrial dispute before the Assistant Labour Commissioner challenging the legality of the order by which his services were terminated. On failure of conciliation proceedings, the dispute was referred to the Labour Court, Rajkot, for adjudication, where it was numbered as Reference (LCR) No.2211 of 1988. The statement of claim was filed by the respondent-workman to which reply was filed by the Corporation at Ex.30. The respondent-workman examined himself at Ex.32 and produced certain documents on record whereas no witness was examined on behalf of the corporation. On appreciation of evidence adduced by the parties, the Labour Court, Rajkot, held that it was not proved that the intention of the respondent-workman was to misappropriate the funds belonging to the Corporation, but it was proved that there was negligence on the part of the respondent-workman while performing duties as a conductor. In view of the said conclusion, the Labour Court, Rajkot, exercised powers conferred upon it under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act, 1947"), and held that the penalty of dismissal from service imposed on the respondent-workman was harsh and was liable to be set aside. The Labour Court, Rajkot, further concluded that denial of backwages would be sufficient punishment meted out to him for showing negligence in performance of duties as a conductor. In view of the above referred to findings, the Labour Court, Rajkot, by an order and award dated January 8, 1991, directed the Corporation to reinstate the respondent-workman in service without backwages, which has given rise to the instant two petitions.

#. I have heard the learned counsel for the parties and considered the documents forming part of the two petitions.

#. From the record of the case, it is evident that no passenger could be examined by the Corporation to substantiate its case that the intention of the respondent-workman was to collect tickets issued to the passengers and to re-issue the same on the return journey. The Labour Court, Rajkot, has given cogent and convincing reasons in paragraphs 5 and 6 of the impugned award for coming to the conclusion that no attempt was made by the respondent-workman to misappropriate the funds belonging to the Corporation. The said finding is based on appreciation of evidence and is not liable to be interfered with in a petition filed under Article 227 of the Constitution of India. The Labour Court, Rajkot, has however concluded that there was negligence on the part

of the respondent-workman in performance of his duties as conductor and while exercising powers under Section 11A of the Act, 1947, has held that the order dismissing the respondent-workman from service being harsh, is liable to be set aside.

#. The Supreme Court, time and again, has ruled that the scope of interference by the High Court in a writ petition under Article 227 of the Constitution of India is very limited. In Ouseph Mathai and others V/s. V.M.Abdul Khadir - (2002)1 SCC 319, the Supreme Court has ruled that a mere wrong decision is not a ground for exercise of jurisdiction under Article 227 of the Constitution. What is explained by the Supreme Court is that the High Court may interfere under Article 227 of the Constitution only where it is established that the lower Court or the Tribunal has been guilty of grave dereliction of duty and flagrant abuse of power which has resulted into grave injustice to any party. In my view, the learned counsel for the Corporation has failed to point out that the Labour Court, Rajkot, has been guilty of dereliction of duty or that it has flagrantly abused the power which has resulted into grave injustice to any party. Thus, the conclusion that the punishment imposed on the respondent-workman is harsh and that he is entitled to be reinstated in service being eminently just, is hereby upheld. Therefore, Special Civil Application No.4263 of 1991 filed by the Corporation is liable to be dismissed.

#. Coming to Special Civil Application No.7681 of 1991 filed by the workman challenging that part of the award by which backwages have been denied to him, it is to be found that he was found negligent in performing his duties in terms of Regulation 27 read with Regulation 9 framed by the Corporation. The negligence shown by the workman could not have been treated lightly and therefore, by way of punishment, the Labour Court has denied backwages to him. Denial of backwages from the date of dismissal of the workman from service, which is May 13, 1988, to the date of award, which is January 8, 1991, cannot be regarded as harsh punishment imposed on the workman for showing negligence in performance of duties as a conductor. Judicial discretion exercised by the Labour Court, Rajkot, under Section 11A of the Act, 1947, is sound one and cannot be upset in the present petition which is also filed under Article 227 of the Constitution. Therefore, Special Civil Application No.7681 of 1991 filed by the workman claiming full backwages is also liable to be dismissed.

#. For the foregoing reasons, both the petitions fail, and are dismissed. Rule is discharged in each petition with no order as to costs.

(J.M.Panchal, J.)

(sunil)